IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TENTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE Mr. JUSTICE C.V.RAMULU

WRIT PETITION No.13813 of 1995

Between:

Ch.Mohan Rao. S/o.Ramakrishnaiah,
60-18-5, 3rd Cross, Ashok Nagar, Vijayawada-520 010
Krishna District

..... PETITIONER

AND

1 The Management of Glaxo India Limited
30, Velachari Road, Guindy, Madras-600 032,
rep.by its Divisional Sales Manager
2 The Presiding Officer,
Labour Court, Guntur

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction particularly one in the nature of writ of certiorari after calling for the records in I,D.No.441/1989 Dt.29/12/1994 and quash the same as illegal, arbitrary and violative of the principles of natural justice apart from being violative of Section 25-F of the I,D,Act and also the Shops and Establishments Act and consequently declare that the petitioner is entitled to be reinstated into service with full back wages, costs, etc., and pass such other order or orders as this Hon'ble Court deems fit and proper in the circumstances of the case.

Counsel for the Petitioner: Mr. G.VIDYASAGAR

Counsel for the Respondent No.1: Mr. K.SRINIVASAMURTHY

Counsel for the Respondent No.2: G.P. FOR LABOUR

The Court made the following :

ORDER:

This writ petition has been filed by the workman challenging the Award dated 29-12-1994 passed by the Labour Court, Guntur in I.D.No.441 of 1989, wherein the claim petition filed by him was rejected.

Before going into the legality of the Award passed by the Labour Court, it may be necessary to note a few facts, which occurred during the pendency of the above I.D.

The above I.D. was filed in the year 1989. On 14-10-1991, the Labour Court gave a preliminary finding that the domestic enquiry conducted by the Management was in violation of principles of natural justice on certain grounds. Aggrieved by the same, the respondent-Management filed W.P.No.16756 of 1991 before this Court, which was allowed on 28-2-1992 setting aside the preliminary finding of the Labour Court and directed to consider the validity of the findings of the two domestic enquiries afresh as to the misconduct and the quantum of punishment in the light of the principles laid down in the said Judgment. Challenging the same, the workman filed Writ Appeal being W.A.No.344 of 1992. A Division Bench of this Court, while admitting the appeal, passed an interim order as under:

> "Interim relief declined. Further proceedings pursuant to the impugned order of the learned single Judge to go on. In the event the party aggrieved by the final decision in the pending proceedings before the Labour Court challenges the same by way of a writ petition, the same should be posted along with the present appeal."

In the meanwhile, the Labour Court disposed of I.D.No.441 of 1989 on 29-12-1994. Therefore, the Writ Appeal was disposed of on 6-2-1997 holding as under:

> "Subsequent events show that after the impugned judgment was delivered, this Court, while admitting the appeal, permitted the Labour Court to proceed to decide the reference on merits. Reference has since

been answered in favour of the Management and against the petitioner-appellant employee. We are informed that the award so made by the Labour Court on merits of the dispute has been questioned in a separate W.P.No.13813 of 1995. Whatever may be the final outcome of the said writ petition, one thing is clear that this Court has rendered the impugned judgment inoperative. Since the impugned judgment has already been rendered inoperative, it is ordered hereby that the same shall be deemed to have not been delivered at all, so that any question that might appear to have been decided by the impugned order may not be used by either party to defeat the cause or ground of the other party."

It is the case of the petitioner-workman that he was appointed as Clerk Grade III in January,1965 in the respondent-management organization at Vijayawada. He was expecting promotion to the post of Clerk Grade I and then to the post of Depot Service Officer. However, for some reason, one P. Adinarayana was promoted as Clerk Grade I. Therefore, he made a representation to the Management aggrieved by being overlooked for promotion. Similarly, one Koteswara Rao, a colleague of the petitioner, was also marching over him, against whom also, he made a representation to the management. He, in the normal course, had lot of leave to his credit; therefore, applied for privilege leave in the year 1987 for 25 days. The respondent-Management immediately asked him to cut short the leave and join duty; accordingly, he joined duty. Thereafter, the respondent-Management had come up with improbable and impossible story that during the period of 25 days when he was on privilege leave, he worked in other company called Jindal Aluminium Limited as Marketing Manager at Hyderabad. It is stated by the Management that they came to know through an Executive i.e. Marketing Manager of the said Company that he worked in the Jindal Alluminium Limited. In fact, had he joined elsewhere, he could not have immediately joined duty when the respondent-management asked him to cut short his leave and join. However, with regard to the above incident, a charge sheet was issued on 29-11-1998 and even before he could submit his explanation, an Enquiry Officer was appointed and one of the witnesses Koteswara Rao was appointed as a Prosecuting Officer. The enquiry conducted was contrary to the provisions of A.P. Shops and Establishments Act. The misconduct alleged against him is not enumerated in the Service Regulations of the Management-company. As such, assuming that there was some misconduct, the same could not have been taken cognizance. Ultimately, he was dismissed from service on 29-9-1989. Aggrieved by the same, he raised an industrial dispute under Section 2-A(2) of the Act in I.D.No.441 of 1989 before the Labour Court at Guntur making the above

allegations. A detailed counter affidavit was filed by the Management denying the allegations made by the workman. After appreciation of the entire material before it, the Labour Court confirmed the order of dismissal passed against the workman. Challenging the same, the present writ petition is filed.

Learned counsel for the petitioner submitted that the Award of the Labour Court is bad in law and liable to be set aside. He also submitted that the Labour Court ought to have seen that the misconduct alleged against the petitioner was not enumerated in the Service Regulations of the Management; as such, no action could have been taken against the petitioner-workman. Assuming that the petitioner obtained employment with Jindal Alluminimum Limited while he was on privilege leave, that itself does not amount to a misconduct, since he had joined duty immediately when called by the Management to do so. He further submitted that even otherwise, the punishment of dismissal from service is disproportionate to that of the misconduct alleged and proved against the petitioner.

Learned counsel for the respondent-management submitted that ample opportunity was given to the petitioner during the domestic enquiry and the petitioner committed breach of contract viz., employed elsewhere while on privilege leave and also committed acts subversive of discipline. Therefore, the order of dismissal passed against the petitioner is not illegal and thus, he supported the Award of the Labour Court.

I have given my earnest consideration to the submissions made by either side and gone through the entire material on record including the impugned Award.

The petitioner applied for privilege leave for 60 days in the year 1987. Of course, after availing 45 days leave, he had come back on the recall notice issued by the management. There is any amount of evidence to show that the petitioner sought for employment in Jindal Alluminium Limited while on privilege leave. Of course, this was unearthed after more than a year and a charge sheet was issued on 29-11-1988. Thereafter, enquiry was conducted and the petitioner was dismissed from service. The Labour Court while dealing with the domestic enquiry conducted noticed that the petitioner got himself appointed with M/s.Jindal Alluminium Limited as their Marketing Manager in Sprinkler Irrigation Division from 15-4-1987 to 23-5-1987. One Mr.I.V.V. Pai, Branch Distribution Manager, Madras stated that in his casual conversation with a co-passenger during air travel, he came to know that the

petitioner joined Jindal Aluminium Limited, Hyderabad. Therefore, he reported the matter to his superior at Madras, who asked him to investigate further. During his investigation, he met the Executive Director of Jindal Aluminium Limited, who confirmed that the petitioner had worked in their company as Marketing Manager and for further details, they directed him to their Head Office in Bangalore. Thereafter, he called on the Administrative Manager and the General Manager of Jindal Alluminium Limited and collected further material. His investigation revealed that the workman applied for the post of General Manager under letter dated 9-2-1987 and he was called for interview on 15-4-1987. The petitioner was appointed as Marketing Manager in the said company on the same day. He worked in that capacity for sometime. However, he submitted his resignation on 23-5-1987 and it was accepted by the Company. He was paid salary of Rs.2,383/- for the said period. Ex.M18 is the copy of the application dated 9-2-1987 filed by the petitioner with Jindal Alluminium Limited. Ex.M19 is the copy of the call letter dated 7-4-1987 from Jindal Alluminium Limited to the petitioner. Ex.M20 is the copy of appointment letter dated 15-4-1987 issued by Jindal Alluminium Limited. Ex.M21 is the copy of the letter dated 19-5-1987 from the petitioner to one of the customers of Jindal Alluminium Limited. Ex.M22 is the copy of resignation letter dated 19-5-1987 submitted by the petitioner. Ex.M23 is the copy of the receipt issued by the petitioner to Jindal Alluminium Limited for the amount of Rs.2,383/- received by him as salary for the period he worked with the company. Exs.M12 to M23 were the documents certified by Jindal Alluminium Limited and collected by I.V.V.Pai, who has been examined as witness and through whom these documents were marked. It was also noticed by the Labour Court that the petitioner did not suggest to the witness – IVV Pai – questioning the genuineness of Exs.M12 to M23. It was also noticed that he did not dispute about his employment with Jindal Alluminium Limited in his explanation submitted to the charge memo. The whole defence of the petitioner was that the double employment does not constitute a misconduct. Therefore, the Labour Court proceeded to hold that the documentary evidence under Exs.M13 to M25 and the oral evidence of IVV Pai would show that the petitioner worked as Marketing Manager in Jindal Alluminium Limited from 15-4-1987 to 23-5-1987. Further, it was also noticed that the fact of double employment was clearly established and whether it amounts to misconduct is a question to be considered. Under Section 60-A of the A.P. Shops and Establishments Act,1966, no employee shall work in any establishment nor shall any employer knowingly permit any employee to work in any

establishment on a day or part of a day on which the employee is given a holiday or is on leave in accordance with the provisions of the Act. Therefore, the Labour Court proceeded to hold that there is a strict prohibition of employment of an employee on a holiday or during his leave period. The misconduct amounts to subversive of discipline and the evidence supported the conclusions reached by the Enquiry Officer. The further charge is that the petitioner submitted false hospitalization claims for himself, his wife and daughter. The petitioner submitted common explanation to the charge sheets dated 29-11-1988 and 5-12-1988. The sum and substance of the explanation to the charge sheet dated 5-12-1988 was that the charge was not maintainable, since the Company's business was not involved and even if the facts alleged in the charge sheet are accepted as wholly proved, yet that would not constitute misconduct under Rule 19 of the A.P. Shops and Establishments Rules,1968. During the enquiry, the Management examined M.Ws.1 to 5 and marked Exs.M1 to M21 and for the workman Exs.W1 to W6 were marked. The workman himself argued the case before the Labour Court and the Labour Court after giving earnest consideration for the submissions made by both sides, came to the conclusion that the petitioner has submitted three false hospitalization claims in respect of himself, his wife and daughter. The Insurance Company got the survey conducted through Surveyor and found that the claims submitted by the petitioner were false. Neither the Insurance Company nor the management imposed any penalty other than taking disciplinary action; so, it cannot be said that the initiation of the disciplinary action is a double jeopardy. Lastly, the Labour Court also considered the proportionality of the punishment for extending the benefit under Section 11-A of the Industrial Disputes Act,1947. After discussing various Judgments of the Apex Court, the Labour Court came to the conclusion that this is not a case where the workman deserves any sympathy, since it was clearly established that the workman was guilty of subversive of discipline and dishonesty. The Management considered the enquiry report and passed orders dated 23-3-1989 removing the petitioner from service. The misconduct proved against the workman is grave in nature and such misconduct deserves removal from service.

Learned counsel for the petitioner advanced yet another argument saying that the domestic enquiry conducted was not valid and the judgment of this Court in

W.P.No.16756 of 1991, dated 28-2-1992 does not come in the way of the petitioner in questioning the validity of the domestic enquiry in this writ petition, particularly in view of the Judgment of this Court in W.A.No.344 of 1992, dated 6-2-1997. I am in complete agreement with the above submission. In view of the fact that the right of the petitioner to question as to the validity of the domestic enquiry was left open in the Judgment dated 6-2-1997 in W.A.No.344 of 1992, I have looked into the entire record and the submissions made by the learned counsel for the petitioner. I am of the considered opinion that the Labour Court has not committed any error in holding that the domestic enquiry conducted by the management was valid by its Order dated 14-10-1991. No substantial irregularities were brought to the notice of this Court to declare that the domestic enquiry conducted by the management was invalid or vitiated.

In the light of the above findings of the Labour Court, I am of the considered opinion that the enquiry conducted by the Management was valid. Further, the charge of obtaining employment during the privilege leave can be said to be a misconduct, whether it is enumerated in the Standing Orders or not. May be, the reasons furnished by the Labour Court in this regard were altogether different. There is any amount of documentary evidence to show that the petitioner obtained employment and served with Jindal Alluminium Limited as a Marketing Manager and also received salary for the period he worked there during the period when he was on privilege leave. Insofar as the charge relating to submission of false hospitalization claims is concerned, it is also amply proved. The petitioner is in the habit of wood wicking the respondent-management seeking employment elsewhere and also claiming false medical bills from the insurance company, which shows his dishonesty.

Now, the only question that remains to be considered is whether the punishment of dismissal from service is in any way disproportionate to that of the misconduct proved against the petitioner ?

It appears that the petitioner, when his juniors were marching over him, applied for privilege leave and sought employment elsewhere. May be, he was finding it difficult to adjust there and in the meanwhile, the management called him back. He promptly joined the service. It was not his case that he never joined in Jindal Alluminium Limited. His whole case was that the misconduct alleged against him as to double employment was not enumerated in the Service Regulations of the

respondent-company; as such, no enquiry could have been conducted by the management and drastic action of dismissal from service could not have been taken. May be, the petitioner was in confusion of mind, but the conduct of the petitioner cannot be said to be subversive of lending expertise of the present company (Glaxo India Limited) to Jindal Alluminium Limited as to any product or chemical equations or processing etc. He was only a Clerk in the respondent-Glaxo India Limited and in Jindal Alluminium Limited also, he was appointed as a Marketing Manager. The products of both the companies are altogether different. Therefore, it cannot be said that the petitioner had lent his expertise whatever he gained in the Glaxo India Limited to Jindal Alluminium Limited. Insofar as the conduct as to submitting false medical bills is concerned, though it is proved, it was really between the insurance company and the petitioner. The insurance company has not taken any action in this regard.

For all the above reasons, I am of the considered opinion that the Labour Court has committed an error in not extending its discretionary power vested under Section 11-A of the Industrial Disputes Act,1947 and considering the proportionality of punishment. I am of the considered opinion that the punishment of dismissal from service imposed by the respondent-management is disproportionate to that of the misconduct proved against the petitioner. Therefore, the order of dismissal dated 29-9-1989 passed by the respondent-management is set aside. Instead of remitting the matter to the Labour Court or to the 1st respondent for reconsideration as to the imposition of punishment in view of the long pending of the litigation, I consider it appropriate to give a quietus to the dispute here itself. Therefore, I consider it appropriate to set aside the order of dismissal and the impugned Award to the extent of confirming the order of dismissal, and treat the case of the petitioner as compulsory retirement from service and direct the 1st respondent to pay him all the retrial benefits under the law. Thus impugned Award of the Labour Court is modified to the following extent:

> "The petitioner shall be compulsorily retired from service with effect from 29-9-1989 and he shall be paid all the retrial benefits eligible as per law. The benefit of reimbursement of medical expenses is allowed in respect of genuine bills and not to false bills."

The Writ Petition is allowed to the extent indicated above. No order as to

costs.

10-3-2005

prk

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Thursday, Tenth day of March Two thousand and Five.

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The Divisional Manager, Glaxo India Limited
30, Velachari Road, Guindy, Chennai-600 032.
2 The Presiding Officer,
Labour Court, Guntur.

3 Govt.Pleader for Labour, High Court Buildings, Hyderabad (OUT).

4 CD copies.